

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANDREW IVCHENKO,

Plaintiff,

-against-

GLOBAL MRV, INC., and CLEAN AIR
TECHNOLOGIES INTERNATIONAL, INC.,

Defendants.
-----X

FEUERSTEIN, District Judge:

ORDER

11-CV-4247(SJF)(GRB)

FILED

IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ FEB 22 2013 ★

LONG ISLAND OFFICE

Pending before the Court is the Report and Recommendation ("the Report") of Magistrate Judge Gary R. Brown, dated February 4, 2013, recommending: (1) that the motion of plaintiff Andrew Ivchenko ("plaintiff") for partial summary judgment on Counts I and II of the complaint be denied; (2) that the motion of defendants Global MRV, Inc. and Clean Air Technologies International, Inc. (collectively, "defendants") seeking dismissal of Counts III through IX of the complaint be granted to the extent that Counts III, IV and VI through IX be dismissed with prejudice and Count V be dismissed without prejudice; (3) that plaintiff's motion to dismiss the counterclaims be granted and the counterclaims for tortious interference, abuse of process, prima facie tort, slander and libel be dismissed without prejudice; and (4) that plaintiff's motion to strike the affirmative defenses be denied. No party has filed any objections to the Report. For the reasons stated herein, the Court accepts Magistrate Judge Brown's Report in its entirety.

I. Standard of Review

Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as

to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See, Fed. R. Civ. P. 72(b); Spence v. Superintendent, Great Meadow Correctional Facility, 219 F.3d 162, 174 (2d Cir. 2000) (a court may review a report to which no timely objection has been interposed to determine whether the magistrate judge committed “plain error.”); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff’d, 305 Fed. Appx. 815 (2d Cir. 2009). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II. Review of Report

No party has filed any objection to Magistrate Judge Brown’s Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Brown’s Report as an Order of the Court.

III. Conclusion

For the reasons set forth therein, Magistrate Judge Brown’s Report is accepted in its entirety; plaintiff’s motion for partial summary judgment as to Counts I and II of the complaint is denied; defendants’ motion to dismiss Counts III through IX of the complaint is granted; Counts III, IV and VI through IX are dismissed with prejudice; Count V is dismissed without prejudice, provided that any amended complaint in accordance with the Report is served and filed **on or before March 25, 2013**, or Count V will be deemed dismissed with prejudice; plaintiff’s motion to dismiss the counterclaims is granted and the counterclaims are dismissed without prejudice provided that defendants re-plead their counterclaims in accordance with the Report **on or before March 25, 2013**, or the counterclaims will

be deemed dismissed with prejudice; and plaintiff's motion to strike the affirmative defenses is denied.

An initial conference in this action is scheduled to be held before me **on March 27, 2013 at 11:00**

a.m., at which the parties or their counsel shall appear with authority, or with persons with authority, to settle this matter.

SO ORDERED.

s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: February ~~22~~ 2012
Central Islip, New York